

John Rooney, David Hinman and Beverly Foster, d/b/a Rooney's at the Mart and Hotel, Restaurant Employees and Bartenders Union, Local 2, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO. Cases 20-CA-13915, 20-CA-14231, and 20-RC-14633

February 14, 1983

**SUPPLEMENTAL DECISION AND
CERTIFICATION OF RESULTS OF
ELECTION**

**BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER**

Pursuant to a Decision and Direction of Election, an election was held in Case 20-RC-14633 on August 18, 1978. The tally was 5 for and 26 against the Union; there were 5 challenged ballots, an insufficient number to affect the results. Thereafter, the Union filed objections to the conduct of the election. On September 25, 1978, the Regional Director for Region 20 consolidated Case 20-RC-14633 with Case 20-CA-13915 inasmuch as certain of the objections involved the same conduct alleged to be unfair labor practices. These cases were subsequently consolidated with Case 20-CA-14231 for decision by an administrative law judge.

On February 12, 1980, the Board issued its Decision, Order, and Direction of Second Election.¹ The Board found that Respondent had violated Section 8(a)(1) and (3) in certain respects; certain of these violations occurred during the critical period between the filing of the representation case

¹ 247 NLRB 1004. Neither Member Zimmerman nor Member Hunter participated in this Decision.

petition and the holding of the election. It was on the basis of this conduct that the election was to be set aside and a new election held.

In an unpublished decision dated February 12, 1982, the United States Court of Appeals for the Ninth Circuit reversed certain of the Board's findings, including those which formed the basis for the Board's Direction of Second Election. The court remanded the case to the Board with instructions to modify its Order regarding Respondent's policy against wearing union buttons. On April 14, 1982, the court entered a judgment conforming the Board's Order in accordance with the court's remand. Respondent has fully complied with the Board's Order in the unfair labor practice proceeding, as modified by the court.

Inasmuch as the court has reversed the unfair labor practice findings upon which the Board's Direction of Second Election was based, and since the Board has accepted the court's decision as the law of the case, the Direction of Second Election is hereby revoked and the results of the election are hereby certified.

**CERTIFICATION OF RESULTS OF
ELECTION**

It is hereby certified that a majority of the valid ballots have not been cast for Hotel, Restaurant Employees and Bartenders Union, Local 2, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.